

REMARKS

Reconsideration and allowance of the above-referenced application are respectfully requested.

I. STATUS OF THE CLAIMS

Claims 5 and 6 are cancelled herein without prejudice or disclaimer.

Claims 1, 7-9, and 11 are amended herein.

In view of the above, it is respectfully submitted that claims 1-3 and 7-20 are currently pending and under consideration.

II. REJECTION OF CLAIM 11 UNDER 35 U.S.C. § 112, SECOND PARAGRAPH

Claim 11 is amended herein to overcome the rejection. Support for the amendments to claim 11 may be found in paragraph 20 on page 4 of the Applicants' specification.

In view of the above, it is respectfully submitted that the rejection is overcome.

III. REJECTION OF CLAIMS 1-3, 5, 7, AND 8 UNDER 35 U.S.C. § 102(B) AS BEING ANTICIPATED BY PERSINGER ET AL. (US 2,996,597)

The present invention as recited in claim 1 (as amended herein) relates to a cooking apparatus comprising "a cover member extending from an edge of the opening to cover an upper surface of the heat blocking member and downwardly inclined so that a material dropping from the food laid on the grill unit is guided into the opening."

Persinger teaches an igniting and heating device for barbecues. The Examiner alleges that Persinger teaches a cover member and directs Applicants' attention to FIG. 1 of Persinger.

However, there is no teaching or suggestion in Persinger of a cover member that extends over reflector portions 52A or 52B. Further, there is no teaching or suggestion of a cover member that extends over reflector portions 52A or 52B and downwardly inclined. Nothing in the Persinger reference teaches or suggests a cover member extending from an edge of the opening to cover an upper surface of the heat blocking member and downwardly inclined so that a material dropping from the food laid on the grill unit is guided into the opening. Therefore, it is submitted that Persinger does not teach the features recited in claim 1 of the present invention.

Dependent claims 2, 3, 7, and 8 (depending, either directly or indirectly, from claim 1) recite patentably distinguishing features of their own, and further, are at least patentably

distinguishing due to their dependencies from independent claim 1. For example, in contrast to Persinger, dependent claim 7 provides, "a tray provided with a reflecting plate set at a predetermined position below the opening to collect a material dropping from the food laid on the grill unit." The Examiner asserts, "when operated only with electrical heating element, with no fuel present in firebox (40), the tray inner wall surfaces...would inherently collect droppings from the grill and reflect radiant heat energy, at least to some degree."

The Examiner relies on broad conclusory statements, subjective belief, and unknown authority in suggesting that Persinger inherently teaches the claimed tray as recited in claim 7 of the present invention. Persinger fails to teach or suggest "a tray provided with a reflecting plate set at a predetermined position below the opening to collect a material dropping from the food laid on the grill unit."

In view of the above, it is respectfully submitted that the rejection is overcome.

IV. REJECTION OF CLAIMS 1-3 AND 5-20 UNDER 35 U.S.C. § 103(A) AS BEING UNPATENTABLE OVER JP 11-299654 IN VIEW OF PERSINGER ET AL., JP 06-154100 AND JP 2002-355178

Claim 1 (as amended herein) relates to a cooking apparatus comprising "a cover member extending from an edge of the opening to cover an upper surface of the heat blocking member and downwardly inclined so that a material dropping from the food laid on the grill unit is guided into the opening." Similar to claim 1, claim 9 recites, "a cover member extending from an edge of the opening to cover an upper surface of the heat blocking members and downwardly inclined so that a material dropping from the food laid on the grill unit is guided into the opening."

JP 11-299654 teaches a grill device. It appears that the Examiner relies on element 13c in FIG. 5 of JP 11-299654. The Examiner alleges that "13c" is a cover member.

By contrast, however, element 13c of JP 11-299654 is merely a portion of the side wall 13a and is not the same as the claimed cover member as recited in claims 1 and 9 of the present invention. Moreover, element 13c does not extend from an edge of an opening of the grill unit to cover an upper surface of a heat blocking member nor does element 13c downwardly incline so that a material dropping from food laid on the grill unit is guided into the opening (see claims 1 and 9). Therefore, it is submitted that JP 11-299654 does not teach the features as recited in claims 1 and 9 of the present invention.

As mentioned in section II above, nothing in the Persinger reference teaches or suggests a cover member extending from an edge of the opening to cover an upper surface of the heat

blocking member and downwardly inclined so that a material dropping from the food laid on the grill unit is guided into the opening.

Accordingly, it is submitted that none of the cited prior art references, either alone or in combination, teaches or suggests the features as recited in claims 1 and 9 of the present invention.

MPEP § 2142 states that "[w]hen the motivation to combine the teachings of the references is not immediately apparent, it is the duty of the examiner to explain why the combination of the teachings is proper." The Examiner is required to present actual evidence and make particular findings related to the motivation to combine the teachings of the references. In re Kotzab, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000); In re Dembiczak, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). Broad conclusory statements regarding the teaching of multiple references, standing alone, are not "evidence." Dembiczak, 50 USPQ2d at 1617. "The factual inquiry whether to combine the references must be thorough and searching." In re Lee, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002) (citing McGinley v. Franklin Sports, Inc., 60 USPQ2d 1001, 1008 (Fed. Cir. 2001)). The factual inquiry must be based on objective evidence of record, and cannot be based on subjective belief and unknown authority. Id. at 1433-34. The Examiner must explain the reasons that one of ordinary skill in the art would have been motivated to select the references and to combine them to render the claimed invention obvious. In re Rouffet, 47 USPQ2d 1453, 1459 (Fed. Cir. 1998).

The Examiner has not presented any evidence why JP 11-299654, Persinger, JP 06-154100, and JP 2002-355178 would have been combined. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. MPEP § 2143.01. Specifically, there must be a suggestion or motivation in the references to make the combination or modification. Id. The Examiner's sole support for such a combination is listed at page 8 of the Office Action. The Examiner cannot rely on the benefit of the combination without first supporting the motivation to make the combination. Such motivation does not appear anywhere in either of the references either of the references, and the Examiner has not presented any actual evidence in support of the same. Instead, the Examiner relies on broad conclusory statements, subjective belief, and unknown authority. Such a basis does not adequately support the combination of references; therefore, the combination is improper and must be withdrawn.

Claims 2, 3, 7, and 8 and claims 10-20 depend respectively from claims 1 and 9, and patentably distinguish over the cited prior art for at least the same reasons as claims 1 and 9.

In view of the above, it is respectfully submitted that the rejection is overcome.

V. CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that each of the claims patentably distinguishes over the prior art, and therefore defines allowable subject matter. A prompt and favorable reconsideration of the rejection along with an indication of allowability of all pending claims are therefore respectfully requested.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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